LEE PUEY HWA

v.

TAY CHEOW SENG

COURT OF APPEAL, SINGAPORE
YONG PUNG HOW CJ
LP THEAN J
CHAN SEK KEONG J
[CIVIL APPEAL NO. 31 OF 1989]
8 JULY 1991

FAMILY LAW: *Maintenance - Lump sum payment - Justification - Feasibility - Individual circumstances of the parties - Discretion of Court - Appellate Court will not interfere - Women's Charter (Cap 353) [Sing], s. 109.*

The respondent husband T, was granted a *decree nisi* on 4 September 1985 and the order was made absolute on 23 December 1985. On 16 August 1985 the appellant wife L, obtained an order for T to pay her $1,000 per month pending the hearing of the petition. On 6 November 1987, the figure was increased by the Court to $1,400 and it was further ordered that the house in which the appellant and their daughter were living was to be transferred to the appellant and the daughter as tenants-in-common in equal shares.

On 28 March 1989, the figure was increased to $1,800, however T was relieved from his previous liabilities for the outgoings of the house.

This is L's appeal against the maintenance order of $1,800 and against the learned Judge's refusal to exercise his discretion to grant L a lump sum.

Held:

[1] The making of a lump sum order is pre-eminently a matter of discretion for the Judge hearing the application and an appellate Court will not disturb his findings except in clear cases of misdirection.

[2] The learned Judge had in the present case taken into account all relevant considerations before deciding not to make a lump sum order.

[3] The appellant will have to bear the outgoings on the house instead of the respondent, which is a logical consequence of the transfer of the property to her and her daughter.

[4] Having regard to all the evidence, including the fact that T is not working, that he is now saddled with another maintenance order for his other family, the maintenance ordered by the learned Judge was manifestly adequate.

[Appeal dismissed.]

Cases referred to:

Allen v. Allen [1985] 1 All ER 93 ***(cit)***
Barnes v. Barnes [1972] 3 All ER 872 ***(cit)***
Bernard v. Joseph [1982] 3 All ER 162 ***(cit)***
Chambers v. Chambers [1980] 1 FLR 10 ***(cit)***
Cooke v. Head [1972] 2 All ER 38 ***(cit)***
Davis v. Davis [1967] 1 All ER 123 ***(cons)***
Ette v. Ette [1965] 1 All ER 341 ***(cit)***
Fraser v. Fraser [1982] 3 FLR 98 ***(cit)***

Jacqueline Bey v. Edmond Lee Yok Lung [1988] 2 MLJ 355 ***(dist)***
Krystman v. Krystman [1973] 1 WLR 927 ***(cit)***
Livesey (formerly Jenkins) v. Jenkins [1985] 1 All ER 106 ***(cit)***
Lombardi v. Lombardi [1973] 1 WLR 1276 ***(cit)***
Millward v. Millward [1971] 1 WLR 1433 ***(cit)***
Minton v. Minton [1979] AC 593 ***(cit)***
Robinson v. Robinson [1983] 4 FLR 102 ***(cit)***
Tay Cheow Seng v. Lee Puey Hwa [1989] 3 MLJ 99 ***(cit)***
Wachtel v. Wachtel [1973] 1 All ER 829 ***(cons)***

Legislation referred to:
Matrimonial Proceedings and Property Act 1970 [UK], s. 2
Women's Charter Cap. 353 1985 Edn. [Sing], s. 109(1), (2)

For the appellant - K S Chung; Chung & Co.
For the respondent - Ng Wing Cheong; Ng & Ng

JUDGMENT

Yong Pung How CJ:

This is an appeal against an order by Lai Kew Chai J in the High Court on 28 March 1989 in the following terms:

(1) that the respondent do pay to the appellant as from 1 June 1988 maintenance at the rate of $1,800 per month;

(2) that the respondent shall not be liable for the outgoings of No. 14 Clover Way, Singapore with effect from 1 June 1988; and

(3) that the respondent shall hold the income of all his shares in the private companies listed in the schedules thereto as a trustee upon trust to pay the maintenance or any part thereof and, subject thereto, the respondent may beneficially deal with the residue, if any, of his income from the said shares. The schedule referred to 411 shares in Tay Miang Huat Pte Ltd., 455 shares in Tay Miang Huat Distillery Pte Ltd., 249 shares in Tay Miang Guan & Co. Sdn. Bhd. and 499 shares in Tong Ah Sdn. Bhd.

The appellant being dissatisfied with the decision appealed to the Court of Appeal against the whole of the decision save and except the order as to costs. Essentially, the appeal was against the learned Judge's maintenance order of $1,800 per month, and, secondly, against his refusal to exercise his discretion to grant the appellant a lump sum.

The basic facts have been summarised by Lai J in his judgment in *Tay Cheow Seng v. Lee Puey Hwa* [1989] 3 MLJ 99. The respondent was granted a *decree nisi* on 4 September 1985 and on 23 December 1985 this was made absolute. After the commencement of the divorce proceedings, the appellant had obtained an order on 16 August 1985 for the respondent to pay her $1,000 per month pending the hearing of the petition. On 6 November 1987, when a summons taken out by the appellant was part heard, the maintenance was increased by Lai J to $1,400 per month with effect from 1 November 1987, and the house in which the appellant and their daughter were living, No. 14 Clover Way, was transferred to the appellant and the daughter as tenants in common in equal shares. The learned Judge found that the appellant had made no provision for medical expenses, maintenance and outgoings for the house, and he ordered the respondent to pay for all the outgoings for the house which he found was in grave need of maintenance and repair. On 28 March 1989, at the adjourned hearing of the part heard summons, the learned Judge increased the appellant's maintenance from $1,400

per month to $1,800 per month with effect from 1 June 1988, but, at the same time, he relieved the respondent from his previous liability for the outgoings of No. 14 Clover Way and his earlier order that the respondent pay for the outgoings was varied accordingly.

The appellant now asks this Court for an order for payment of $760,347 by way of a lump sum and, pending payment, that the monthly maintenance should be kept up and this maintenance should not be less than $3,000 per month, on the basis of an order made against another advocate and solicitor by the previous Chief Justice on 12 February 1982. She contends that the respondent has at no time made a full and frank disclosure of his available assets which clearly are in excess of the $1,308,534.71 which have been admitted by him, and out of which a lump sum could be ordered. She points out that even after the judgment in March 1989, he had on 19 April 1989, barely three weeks after the judgment, sold a property 11 Binjai Walk for $1.54 million; and on 28 April 1989, one month after the judgment, he had purchased another property 21J Mandalay Ville for a lady friend. Full and frank disclosure is important; *Robinson v. Robinson* [1983] 4 FLR 102, approved in *Livesey (formerly Jenkins) v. Jenkins* [1985] 1 All ER 106; and in its absence the Court is entitled to draw inferences adverse to the husband as to his capacity or faculties and to treat him as a man in a position to command a very substantial income: *Ette v. Ette* [1965] 1 All ER 341. The appellant contends therefore that the learned Judge erred in not granting a lump sum in that he failed to give any weight, or sufficient weight, to several factors - the respondent's failure to disclose assets; his available capital resources or liquidity; the appellant's lack of education which precluded her from effectively fending for herself; their respective contributions to the welfare of the family, particularly the appellant's continuing care of the child of the family; and that No. 14 Clover Way has been in great need of maintenance and repairs.

Counsel for the respondent has submitted that the respondent left the family house at 147 Killiney Road which was their matrimonial home as early as 1967. He had gone and set up home with the party cited, whom he had since married, at No. 11 Binjai Park, and before the divorce the respondent and the appellant had lived apart for more than 20 years. Since 1971 the appellant has lived with the daughter at No. 14 Clover Way which the respondent bought for them with his share of the proceeds of sale of the family house at 147 Killiney Road. Since 1974 the respondent has given the appellant $800 per month as maintenance, and the question of maintenance or its sufficiency had never been raised until the divorce petition was filed in 1985. When the appellant, as a result of this, first applied to Court in 1985 for maintenance, she particularized her monthly expenditure and needs at only $1,100 per month and asked for only $1,400 per month, following which she was given $1,000 per month pending the hearing of the petition. In 1981 the $1,000 per month was increased by Lai J to $1,400 per month. Finally, in March 1989, after a four-day hearing Lai J increased the sum again to $1,800 per month, but relieved the respondent from further liability for the outgoings of No. 14 Clover Way. In making this order, the learned Judge had already taken into account all the circumstances, financial and otherwise, of the parties. The appellant had produced no evidence to support the claim for $3,000 per month. On the other hand, the respondent had since remarried and now has two sons, who were at that time 16 and 19 years of age; the respondent had a maintenance order made against him recently to pay his wife and two sons a total of $3,500 maintenance per month and regard had to be given to his responsibilities to this other family: *Barnes v. Barnes* [1972] 3 All ER 872; *Allen v. Allen* [1985] 1 All ER 93. The property known as 11 Binjai Walk was acquired through the joint efforts of the respondent and the party cited, and they were therefore jointly entitled to the beneficial interest in it to the exclusion of the appellant: *Cooke v. Head* [1972] 2 All ER 38 followed in *Bernard v. Josephs* [1982] 3 All ER 162.

As for a lump sum payment, Counsel for the respondent cited *Millward v. Millward* [1971] 1 WLR 1433 in which Edmund Davies LJ cautioned that the making of lump sum orders (under s. 2 of the English Matrimonial Proceedings and Property Act 1970) ought not to become commonplace and approved *Davis v. Davis* [1967] 1 All ER 123 in which Wilmer LJ said at p. 126:

> ... an order for a lump sum payment can only properly be made against a husband possessed of sufficient capital assets to justify it.

Wachtel v. Wachtel [1973] 1 All ER 829 was a case in which a lump sum payment was considered in relation to the matrimonial home as the principal asset, but in the present case the appellant and the daughter already had No. 14 Clover Way which was worth $370,000. *Jacqueline Bey v. Edmond Lee Yok Lung* [1988] 2 MLJ 355 should be distinguished, because the matrimonial home had been sold and there was a risk that it could be difficult to contact the husband who travelled frequently. As the parties in the present case had been separated for a long time, this was a factor which should preclude the wife getting either a lump sum payment or maintenance: *Krystman v. Krystman* [1973] 1 WLR 927; *Lombardi v. Lombardi* [1973] 1 WLR 1276; *Chambers v. Chambers* [1980] 1 FLR 10; and *Fraser v. Fraser* [1982] 3 FLR 98. The respondent had provided all the information which he could about his financial affairs. The shares which he held were in private family companies and were not readily disposable.

In the present case, the appellant's application for a lump sum payment was made under s. 109(1) of the Women's Charter Cap 353 1985 Edn. which reads:

> 109(1) A maintenance order may provide for the payment of a lump sum or such periodical payment as the Court may determine.

This provision is different from that under s. 2 of the Matrimonial Proceedings and Property Act 1970 in England which empowers the Court on granting a decree of divorce to make orders for both lump sums and periodical payments.

A divorce puts an end to a marital relationship. Although in practice, questions of custody of children and access to them, division of matrimonial assets, and arrangements for maintenance, often force on the parties a residual relationship, there is every advantage to both parties to put a final end to this relationship and to achieve a clean break as soon as this is practicable: *Minton v. Minton* [1979] AC 593. In so far as maintenance of a spouse is concerned, the Court's power to order a lump sum payment, as an alternative to periodical payments, makes it possible for a husband, who has the means to make a lump sum payment, to achieve a clean break, and is clearly a method which should be taken advantage of whenever this is feasible. In deciding whether to order a lump sum payment, the Court should consider the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, in addition to his assets, his earning capacity and other available resources. In any case, an order for a lump sum should not be made if the husband does not have adequate cash or other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power.

Even where a lump sum payment is considered, the making of the lump sum order is pre-eminently a matter of discretion for the Judge hearing the application and a Court of Appeal will not interfere with an order made by a Judge unless it is clear that the Judge exercised his discretion on a wrong principle or, in exercising his discretion, has made a decision which is improper, unjust or wrong. In the present case, the learned Judge noted

that the appellant was asking for one-third of the "capital worth" of the petitioner which she claimed was about $2.281 million and, in other words, was asking that the respondent be ordered to pay her $760,347 as a lump sum. He noted that the appellant already had a half share in No. 14 Clover Way which was valued at $370,000, the other half share being vested in her daughter and that in addition she was receiving a periodical payment. As to the respondent's other assets, he expressed the following views, with which we are in agreement:

> The (respondent's) wealth was largely inherited and his own acquisitions were achieved in the course of his professional practice, with considerable help from the party cited during a period when his marriage to the (appellant) was over to all intents and purposes. Further, his inheritance in the form of the shares in the private companies are all not easily realisable.

Accordingly, the learned Judge was not prepared to exercise his discretion under s. 109(1) but, being anxious to secure the payment of maintenance to the appellant, used the powers conferred on him by s.109(2) to order that the respondent should hold the income of all shares in the private companies as a trustee upon trust to pay the maintenance ordered. We are satisfied that in the present case the learned Judge took into account all relevant considerations before deciding not to make a lump sum order, and that his decision was correct.

The appellant has also appealed in the alternative against the maintenance awarded to her of $1,800 per month. To a large extent, the considerations which relate to the consideration of a lump sum payment are also relevant to the consideration of monthly maintenance. One of the appellant's contentions that she should have $3,000 per month, simply because a maintenance order for $3,000 per month was made against another solicitor in 1982, is not a contention over which this Court need deliberate for long. In considering the figures, however, we have been concerned that the apparent increase of the monthly maintenance from $1,400 to $1,800 per month was offset by the amount of the outgoings for No. 14 Clover Way which the appellant would now have to bear and which would result in the $400 increase being reduced to $180. That the appellant will now have to bear these outgoings instead of the respondent is, in our opinion, a logical consequence of the transfer of the property to her and her daughter. The only question which remains is whether this Court would be justified in disturbing the maintenance of $1,800 per month awarded by the learned Judge. There had been two interim orders, and this was a final order made at the conclusion of the hearing after he had heard all the evidence and had made detailed calculations. Having regard to all the evidence, including the fact that the respondent is not working, that he is now saddled with another maintenance order for his family, and that the assets in the private companies are not easily disposable, we are of the opinion that the maintenance ordered by the learned Judge is not manifestly inadequate and that the appeal against this order should be dismissed with costs.

Also found at [1991] 3 CLJ 2703